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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

KRISTEN WILLIAM DAVIS,

Defendant and Appellant.

E070301

(Super.Ct.No. FSB17000694)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ronald M. Christianson, Judge. Affirmed.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Natasha Cortina, and Amanda E. Casillas, Deputy Attorneys General, for Plaintiff and Respondent.

## I.

### INTRODUCTION

Defendant and appellant, Kristen William Davis, was tried by a jury and convicted of human trafficking for purposes of committing extortion (Pen. Code, §§ 236.1, subd. (b), 518)<sup>1</sup> and for assault by means of force likely to cause great bodily injury, among other convictions. (§ 245, subd. (a)(4).) In a subsequent bifurcated court trial, the court found defendant had three prison prior offenses and a prior human trafficking offense. (§§ 667.5, subd. (b), 236.4, subd. (c).) Defendant was sentenced to a total of 31 years, eight months, consisting in part of the upper term of 20 years for trafficking and one year for assault. Defendant appealed.

On appeal, defendant argues the trial court erred by sentencing defendant for both the human trafficking conviction and the assault, because the assault was part of the continuing course of conduct forming the basis for the human trafficking conviction. We affirm the judgment.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

M. Doe and defendant began a romantic relationship about six years prior to trial. M. Doe had four children. M. Doe was addicted to alcohol throughout the relationship.

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Penal Code.

The relationship became violent less than one year in, with both parties engaging in domestic violence.

Some years into the relationship, defendant informed M. Doe that she owed him \$10,000. According to defendant, M. Doe owed this debt because she got into a fight with a woman who had \$10,000 of defendant's money in her car trunk. After the fight, the woman left and did not return with the \$10,000. M. Doe did not know there was money in the woman's car and, despite immediately informing defendant of the woman's departure, defendant did not tell M. Doe about the money until months later.

Defendant demanded that M. Doe pay off this debt through prostitution. M. Doe did not want to work as a prostitute but was afraid for her life and her family's safety. Specifically, she recalled defendant telling her "on a daily basis," that he knew everybody in her family and that "[i]t wouldn't be anything to hurt them or have them hurt." M. Doe gave all the money she earned as a prostitute to defendant. Defendant also used M. Doe's vehicles as if they were his own and M. Doe even signed the title for one of her cars over to him. Defendant controlled M. Doe through violence, threats, and alcohol.

M. Doe tried to leave defendant twice. Both times defendant threatened that he would hurt M. Doe's family if she did not come back. The second time M. Doe tried to leave, defendant sent her a picture of her children's school with a text message saying "[i]f I can shoot them with a camera, I can shoot them with a gun. You better come home." When M. Doe returned after this second attempt to leave, defendant hit her "profusely."

When M. Doe returned to defendant, she met Ashley W. Defendant brought on Ashley W. to work as a prostitute to replace M. Doe while M. Doe was away. Ashley W. had become defendant's "bottom bitch," which meant she assisted defendant in managing the other prostitutes working for him. This often included using violence or the threat of violence to keep the other prostitutes in line.

M. Doe met B. Doe while working as a prostitute in Orange County.<sup>2</sup> At the time, B. Doe was 17 years old. M. Doe offered B. Doe a ride back to San Bernardino with her and defendant. Sometime after that, Ashley W. asked B. Doe to join defendant as one of his prostitutes. M. Doe, Ashley W., and Desire J. all worked as prostitutes for defendant at least once in Orange County.

After the excursion to Orange County, defendant took M. Doe, B. Doe, Ashley W. and Desire J. to Las Vegas in M. Doe's car. M. Doe, B. Doe, and Desire J. worked as prostitutes while Ashley W. and defendant stayed in the car and collected money.

On the return trip, M. Doe, defendant, Ashley W. and Desire J. got into an argument. Defendant, Ashley W., and Desire J. all told M. Doe that she was not performing well enough, that she was a horrible person, and that she owed everyone money. Defendant also complained that he felt M. Doe mistreated his children, and Ashley W. and M. Doe argued over their relative positions in the group's hierarchy. At

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<sup>2</sup> Though B. Doe refers to a Sarah in her testimony, this is apparently the name by which she knew M. Doe.

the time M. Doe was seated in the back between Desire J. and B. Doe, with defendant in the driver's seat and Ashley W. in the front.

Defendant said that "he could not save [M. Doe] any longer," and that he was going to let Ashley W. and Desire J. "do what they wanted to do." Desire J. then climbed on top of M. Doe and began hitting her in the face. Desire J. testified she did this because defendant promised her drugs and because she was irritated with M. Doe. M. Doe tried to fight back, and in response Ashley W. took out a belt, wrapped it around her arm and hit M. Doe in the face with the metal belt buckle multiple times. The attack left M. Doe with two black eyes, a broken nose, severe lacerations and permanent facial scarring. B. Doe did not hear defendant specifically encourage the beating, but said he started the argument leading up to it and did not do anything to stop it.

B. Doe feared that the same fate would befall her and decided she had to get away. Sometime thereafter, defendant kicked B. Doe out of the car and left her at a Denny's because he did not believe she was over 18. B. Doe called the police from the Denny's.

The next day, defendant and Ashley W. forced M. Doe to write a letter falsely accusing her grandfather of sexually abusing M. Doe when she was young. Defendant and Ashley W. intended to use this letter to coerce M. Doe's grandfather into paying them. M. Doe did not want to write the letter and did so because defendant and Ashley W. told M. Doe that they would beat her again if she did not write the letter. Ashley W. had a belt in her hand while M. Doe wrote the letter, and M. Doe testified that she feared for her life.

Defendant and M. Doe were arrested the same day M. Doe was forced to write the letter, November 3, 2016. Ashley W. was also arrested the same day. Defendant was charged with human trafficking of an adult for purposes of committing extortion (§§ 236.1, subd. (b), 518; count 1), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 2), pandering by procuring a minor over the age of 16 (§ 266i, subd. (b)(1); count 3), pimping a minor over the age of 16 (§ 266h, subd. (b)(1); count 4) and human trafficking a minor for the purposes of prostitution (§ 236.1, subd. (c)(1); count 5).

At trial, defendant testified on his own behalf. Defendant denied that he pimped B. Doe and denied that he forced M. Doe to go to Las Vegas or to work as a prostitute. Defendant also denied that M. Doe owed him \$10,000 or that he had ever tried to blackmail M. Doe or her grandfather; and insisted he tried to break up the fighting between Ashley W., Desire J. and M. Doe.

After a jury trial, defendant was convicted on all counts. In a subsequent court trial, the court found defendant had three prior prison offenses (§ 667.5, subd. (b)) and a human trafficking prior offense. (§ 236.4, subd. (c).)

At sentencing, the trial court imposed the upper term of 20 years on count 1, plus one year for count 2, two years eight months for count 5, three years for the prior prison offenses, and five years for the prior human trafficking offense. It stayed punishment on counts 3 and 4 pursuant to section 654. The court decided not to stay punishment for the assault because it found it was a “separate act of violence on the victim from Count 1.”

Defendant timely appealed.

### III.

#### DISCUSSION

Defendant argues that the trial court violated section 654's prohibition against multiple punishments by imposing sentences for both human trafficking for purposes of extortion and assault (counts 1 & 2). Specifically, he argues that the assault was indivisible from the ongoing course of conduct forming the basis for his human trafficking conviction. We disagree.

“Section 654 does not preclude multiple convictions but only multiple punishments for a single act or indivisible course of conduct.” (*People v. Pinon* (2016) 6 Cal.App.5th 956, 967, quoting *People v. Miller* (1977) 18 Cal.3d 873, 885.) “Whether a defendant may be subjected to multiple punishment under section 654 requires a two-step inquiry. . . . We first consider if the different crimes were completed by a ‘single physical act.’ [Citation.] If so, the defendant may not be punished more than once for that act. Only if we conclude that the case involves more than a single act . . . do we then consider whether that course of conduct reflects a single “‘intent and objective’” or multiple intents and objectives.” (*People v. Corpening* (2016) 2 Cal.5th 307, 311-312.)

Here, there is substantial evidence to support the trial court's implied finding that the crimes involved more than a single act. Defendant threatened M. Doe by indicating that he knew where her kids went to school and that he would shoot them if she did not continue working for him. Defendant also threatened M. Doe with violence to get her to

write a letter accusing her grandfather of sexual misconduct in order to coerce him into giving her money, which she would then give to defendant. Further, defendant would tell M. Doe on a daily basis that he knew everyone in her family and “[i]t wouldn’t be anything to hurt them or have them hurt.” Defendant also aided and abetted in the beating of M. Doe by Ashley W. and Desire J.

Once a reviewing court determines that the case involves more than a single act, it must then consider whether the course of conduct reflects a single intent and objective or multiple intents and objectives. (*People v. Corpening, supra*, 2 Cal.5th at pp. 311-312.) “Whether the acts of which a defendant has been convicted constitute an indivisible course of conduct is a question of fact for the trial court, and the trial court’s findings will not be disturbed on appeal if they are supported by substantial evidence.” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1252-1253.)

A course of conduct is indivisible, and thus not subject to multiple punishment under section 654, “if all the offenses are incident to one objective.” If the offenses defendant committed during the course of conduct “are incident to one objective,” he may be punished for any one of them, but not more than one. (*People v. Miller, supra*, 18 Cal.3d at p. 885, overruled on other grounds as recognized in *People v. Oates* (2004) 32 Cal.4th 1048, 1068, fn. 8.) On the other hand, “[w]hen the criminal acts forming the basis for convictions of multiple substantive offenses are divisible—i.e., reflecting separate intents, objectives or events—then section 654 has been held inapplicable.” (*People v. Wooten* (2013) 214 Cal.App.4th 121, 130.)



Here, there is substantial evidence to support the trial court's implied finding that the course of conduct evidenced more than one intent and objective. The court could reasonably find that the intent and objective of the assault was to punish M. Doe for her alleged mistreatment of defendant's children and to punish a perceived disrespect on the part of M. Doe towards defendant based upon her talking back and "talking mess" to everyone in the car. These intents and objectives were separate from and independent of defendant's intent to violate M. Doe's personal liberty for the purposes of extortion which underlies the human trafficking conviction.

Moreover, if the assault were carried out in furtherance of defendant's intent to continue trafficking M. Doe "section [654] cannot, and should not, be stretched to cover gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense.'" (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 272, quoting *People v. Nguyen* (1988) 204 Cal.App.3d 181, 191.) At the time of the assault, defendant had been successfully trafficking and extorting M. Doe with threats, and there is no evidence that M. Doe had any means of escaping defendant's control when defendant assented to her assault. Thus, there was sufficient evidence for the trial court to conclude that the assault was a gratuitous act of violence not necessary to compel M. Doe's continued compliance.

Defendant argues this case is analogous to *People v. Mejia* (2017) 9 Cal.App.5th 1036. However, *Mejia* is distinguishable. In *Mejia*, the court considered whether a defendant could be punished separately for spousal rapes and assaults that formed the

basis of his torture conviction. (*Id.* at p. 1042.) The court noted that “[t]orture requires the infliction of great bodily injury with the intent to cause cruel or extreme pain and suffering. [Citation.] To satisfy that element, the statute necessarily requires the intentional commission of one or more assaultive acts.” (*Id.* at p. 1044.) Because torture and assault shared a necessary element in common “a defendant may be convicted of both torture and of any or all of the underlying acts,” but “section 654 precludes imposition of unstayed sentences for both torture and any of the underlying assaultive offenses upon which the prosecution relies to prove that element.” (*Id.* at pp. 1044-1045.)

Here, defendant’s assault charge and human trafficking for purposes of extortion charge did not share any necessary elements in common. To prove that a defendant is guilty of human trafficking for purposes of extortion, the People must first prove that (1) the defendant deprived another person of or violated that person’s personal liberty, and that (2) when he did so he intended to commit extortion. (*See* CALCRIM No. 1243; § 236.1, subd. (b).) Extortion, in turn, may be proven by showing that the defendant (1) used or threatened to use force against another person or threatened to accuse them or a relative of a crime, (2) with the specific intent of inducing the victim to consent to giving the defendant their property, (3) which threat does induce consent, and (4) the person gives the defendant the property. (CALCRIM No. 1830; see also *People v. Hesslink* (1985) 167 Cal.App.3d 781, 789.) An aggravated assault, on the other hand, occurs when a person uses “force likely to produce great bodily injury” upon another person and does

not require a specific intent. (§ 245, subd. (a)(4); *People v. Williams* (2001) 26 Cal.4th 779, 785.)

Though physical violence is sufficient to meet the force or fear elements in extortion and human trafficking, physical violence is not necessary. A defendant can be convicted of human trafficking for the purposes of extortion on the basis of threats of violence alone, without evidence of actual physical violence. (See § 236.1, subd. (h)(3) [defining deprivation or violation of the personal liberty of another as including “substantial and sustained restriction of another’s liberty accomplished through . . . threat of unlawful injury.”]; *People v. Goodman* (1958) 159 Cal.App.2d 54, 61 [“Fear, such as will constitute extortion, may be induced by a threat either to do an unlawful injury to the person of the individual threatened, or to accuse him of any crime.”].) Therefore, unlike in *Mejia*, assaulting M. Doe was not a necessary underlying offense to trafficking M. Doe.

Finally, defendant argues that the trial court’s failure to apply section 654 violated defendant’s due process rights under the Fourteenth Amendment of the United States Constitution. It is true “that a state law guaranteeing a criminal defendant procedural rights at sentencing, even if not constitutionally required, may give rise to a liberty interest protected against arbitrary deprivation by the due process clause.” (*People v. Frye* (1998) 18 Cal.4th 894, 1026, overruled on a different ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) However, here there was no error in the application

of section 654, and defendant does not point to any other alleged procedural error. Thus, since we find no error in the application of section 654, we find no due process violation.

IV.

DISPOSITION

The judgment is affirmed.

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FIELDS  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.